

Proposed Title 19

**RULES GOVERNING THE ARKANSAS POULTRY FEEDING OPERATIONS
REGISTRATION PROGRAM**

TITLE XIX

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SUBTITLE I. GENERAL PROVISIONS

Section 1901.1 Purpose

- A. These rules govern the Commission's Poultry Feeding Operation Registration Program.
- B. Poultry Feeding Operations are registered to locate Litter sources and estimate the amount of Litter produced.
- C. The Arkansas Soil and Water Conservation Commission shall operate an annual registration program for the purpose of assembling and maintaining information on the number, composition, and practices of Poultry Feeding Operations in the state.

Section 1901.2 Enabling and Pertinent Legislation

- A. Arkansas Code Annotated §§15-20-201 et seq., "Arkansas Soil and Water Conservation Commission Act."
- B. Ark. Code Ann. §§ 15-20-901 et seq., "Arkansas Poultry Feeding Operations Registration Act."
- C. Ark. Code Ann. §§ 25-15-201 et seq., "Administrative Procedure Act."

Section 1901.3 Definitions

The following definitions shall apply to all parts of this Title:

- A. "Administrative Consent Order" means a legal agreement signed by the Director and the owner or operator of a Poultry Feeding Operation.
- B. "Commission" means the Arkansas Soil and Water Conservation Commission, as defined in Ark. Code Ann. §§15-20-201 et seq.
- C. "Conservation District" or "District" means a District created under the Conservation Districts Law, Ark. Code Ann. §§14-125-101 et seq.
- D. "Delegate" means a Person or entity appointed by the Director to function in a specific capacity in furtherance of this program and may be another agency, commission, organization, or company, whether public or private.
- E. "Director" means the Executive Director of the Arkansas Soil and Water Conservation Commission.

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- F. “Land Application” means the application of Litter, in whole or in part, to land.
- G. “Litter” means byproducts associated with the confinement of Poultry, including excrement, feed wastes, bedding materials, composted carcasses, and any combinations thereof.
- H. “Litter Management System” means any method to dispose or use Litter.
- I. “Nutrient” means a substance or recognized plant Nutrient, element or compound, which is used or sold for its plant nutritive content or its claimed nutritive value. The term includes substances found in, but is not limited to, livestock manure and Poultry Litter, compost as fertilizer, commercially manufactured chemical fertilizers, sewage sludge or combinations thereof.
- J. “Permit” or “Permit Coverage” refers to an authorization to operate that is required by the Environmental Protection Agency’s Concentrated Animal Feeding Operations (CAFO) program for Poultry Feeding Operations meeting the size thresholds listed on the Commission’s registration form.
- K. “Person” means any individual, partnership, company, association, fiduciary, corporation, or any organized group of Persons whether incorporated or not.
- L. “Poultry” means chickens, turkeys, ducks, geese, and any other domesticated birds.
- M. “Poultry Feeding Operation” means any lot or facility where two thousand five hundred (2,500) or more Poultry are housed or confined and fed or maintained on any one day in the preceding twelve-month period. For the purposes of determining the number of animals at an operation, multiple Poultry houses under common ownership are considered to be a single Poultry Feeding Operation if they adjoin each other or if they share a common area or system for the disposal of wastes.
- N. “Poultry Integrator” means an entity that processes Poultry for commercial sale.
- O. “Warning Letter” means a written description signed by the Director of a violation of this Title and the necessary corrective action. A Warning Letter cannot be used to assess civil penalties, is not appealable to the Commission, and is not final agency action.

SUBTITLE II. REGISTRATION PROGRAM

Section 1902.1 Applicability

Persons in the state of Arkansas who own or operate Poultry Feeding Operations where 2,500 or more Poultry are housed or confined on any given day will be required to register annually with the Commission.

Section 1902.2 Registration Period

A. All Poultry Feeding Operations shall register from January 1 to March 31 each year and facilities constructed after March 31 of any year shall register during the next available period of registration.

B. Effective March 31, 2005, all Poultry Feeding Operations shall register in the manner denoted below or be deemed out of compliance and subject to penalties set forth in these regulations.

C. Facilities must annually renew registration by submitting a renewal form and the annual fee.

Section 1902.3 Registration Information

A. Operators shall submit to the Commission or Conservation Districts, on forms to be supplied by the Commission, the following information concerning the previous calendar year:

1. The number and type of birds housed or maintained by the operation;
2. The location of the operation by latitude and longitude and county, township, range, and section;
3. The business address of the owner of the facility;
4. The address of the facility if different from the owner's business address;
5. The type of waste handling system;
6. The type of Litter Management System used;
7. The type of Litter storage system used and the amount of Litter stored;
8. The method used for carcass disposal;
9. The acreage owned, controlled, or used by the Poultry Feeding Operation and used for Land Application of Litter;
10. Tons of Litter produced, removed, transferred or otherwise used by the Poultry Feeding Operation and the type of transfer or usage;
11. The Poultry Integrator or integrators with which the Poultry Feeding Operation has contracted to provide Poultry or Poultry Litter; and
12. Any other relevant information deemed necessary by the Commission.

B. The Conservation District office wherein the majority of the facility is located is available to assist the operator in filling out the registration form.

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C. Conservation Districts will collect any fees accompanying the registration form and will deliver the fees to the appropriate agency or department, if applicable.

Section 1902.4 Submission of Materials

A. Registration materials shall be sent to either:

1. Poultry Feeding Operation Registration Program, Arkansas Soil and Water Conservation Commission; Conservation and Education Division; 101 E. Capitol, Suite 350, Little Rock, AR 72201, or
2. The Conservation District office wherein the majority of the facility is located.

B. If the operator is applying for a Permit or Permit Coverage under the Environmental Protection Agency's Concentrated Animal Feeding Operations program and does not directly submit the fee to the District, the operator must mail a copy of the form and fee to the address listed on the form.

Section 1902.5 Requirement to Keep Current Address on File

A. All Persons registering operations are required to provide the Commission or the District wherein the majority of the facility is located with current address and other requested contact information within fifteen (15) working days of change.

B. Mail will be addressed to the most recent address on file with the Commission or District. Registered or Certified Mail sent with proper postage and to the last known address that is returned unclaimed shall be considered adequate notification of notice served.

C. Failure to update the Commission or District with current address may be considered refusal to accept mail which is a violation of these rules and could result in disciplinary action.

Section 1902.6 Not a Public Record

A. Registration information collected about an individual Poultry Feeding Operation shall not be public record.

B. Summary information that prevents identification of individual Poultry Feeding Operations shall be a public record.

Section 1902.7 Fees

A. Operation owners shall pay an annual ten dollar (\$10) fee for every Poultry Feeding Operation under the owner's control.

B. Fees are non-refundable and shall not be prorated.

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C. All registration fees collected by the Conservation District shall be used by the District to administer the Poultry Feeding Operation Registration Program.

D. All fees collected by the Commission through any penalty assessed under this Title shall be deposited in the state treasury and shall be used to operate the programs administered by the Commission through Titles 19, 20, 21, and 22 of the Commission's rules.

SUBTITLE III. PENALTY FOR NONCOMPLIANCE

Section 1903.1 Noncompliance

The registered owner must comply with all conditions of registration. It shall be a violation of Ark. Code Ann. §§15-20-901 et seq. and these rules for any Person to:

1. Provide misleading, false, or fraudulent registration information; or
2. Fail to register annually or promptly provide any record or allow the Commission access to inspect any records required to be kept by these rules.

Section 1903.2 Review of Suspected Noncompliance

A. Upon complaint or suspicion of suspected violation of 1903.1, Commission or Conservation District staff may investigate an owner or operator of a Poultry Feeding Operation and may recommend disciplinary action to the Director.

1. Anyone providing information to the Commission about a possible violation must provide the substance of the complaint to the Commission in writing and must provide his legal name and current mailing and physical addresses where the complainant may be contacted. The complaint must be verified by the notarized signature of the complainant.

2. Complaints are subject to the Freedom of Information Act, Ark. Code Ann. §§ 25-19-101 et seq.

B. After reviewing evidence provided to him or her regarding a possible violation, the Director will determine whether there is evidence that a violation has occurred. If the Director finds that a violation occurred, the Director may issue a Warning Letter or Administrative Consent Order to the alleged violator, stating the violation and the resulting corrective or disciplinary action. If an incomplete complaint is received or the Director finds that there is not sufficient evidence of a violation, the Director will inform the complainant and alleged violator in writing.

Section 1903.3 Administrative Penalties

A. Upon the first violation of these rules by an owner or operator within any one-year period, the owner or operator shall be issued a Warning Letter. For the second violation within any one-year period, the Director may assess not more than fifty dollars (\$50) in cumulative civil penalties. Upon the third violation within any one-year period, the

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Director may impose a penalty not to exceed five hundred dollars (\$500) for each violation of Ark. Code Ann. §§15-20-901 et seq. and this Title.

B. A Warning Letter or Administrative Consent Order may be served by certified mail, restricted delivery, return receipt requested to the address on file with the Commission or District or by any means sufficient for service of process in a civil court action.

C. The owner or operator may choose to sign an Administrative Consent Order and thereby agree to the penalties contained within the Order. The owner or operator will also be deemed to have consented to the Order if he or she fails to respond to the Commission in writing within thirty (30) days of receipt of the Administrative Consent Order and the Commission has proof that the owner or operator was served with the Administrative Consent Order.

D. If the owner or operator disputes that a violation occurred or believes the assessed penalty is too harsh, the owner or operator must respond to the Administrative Consent Order within thirty (30) days by requesting a hearing before the Commission. The hearing will be conducted in accordance with Commission rules, Title I. The Commission has the burden of proving the alleged facts and violations of law stated in the Administrative Consent Order. The Commission and the Director may issue subpoenas to any witness requiring his or her attendance and testimony before the Commission as provided in Ark. Code Ann. § 15-22-208.

E. The Commission will not take final administrative action against Persons accused of violating this Title or Ark. Code Ann. §§15-20-901 et seq. until the accused Person has executed an Administrative Consent Order or been given opportunity for a hearing to review the decision under Commission Rules, Title I, Rules of Organization and General Operation of the Arkansas Soil and Water Conservation Commission.

SUBTITLE IV. JUDICIAL REVIEW

Section 1904.1 Judicial Review

By law, a person who considers himself or herself injured in his or her person, business, or property by an executed Administrative Consent Order or a Commission order following a hearing has the right to appeal the case to District Court in his county of residence, the county where he does business, or in Pulaski County within thirty days of the decision. The executed Administrative Consent Order or Commission decision shall constitute final agency action for the purpose of judicial review. Judicial review of final agency action shall be as provided by the Arkansas Administrative Procedure Act, Ark. Code Ann. §§ 25-15-201 et. seq.